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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11 Case No.
	:	
GENERAL MOTORS CORP., <i>et al.</i>	:	Case No. 09-50026 (REG)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**OBJECTION OF SAS INSTITUTE INC. TO DEBTORS' PROPOSED  
CURE COSTS RELATED TO CERTAIN EXECUTORY CONTRACTS  
INTENDED TO BE ASSUMED AND ASSIGNED BY THE DEBTORS**

SAS Institute Inc. ("SAS") hereby submits this objection ("Objection") to the cure amount proposed by General Motors Corporation and its affiliated debtors (collectively, the "Debtors") in connection with the Debtors' intended assumption and assignment of certain license agreements, and in support thereof respectfully states as follows:

**BACKGROUND**

1. SAS is a corporation formed and existing under the laws of the State of North Carolina which is in the business, *inter alia*, of licensing business software products ("Software") to end customers. SAS grants the end customer a nonexclusive, nonassignable, and nontransferable license to use the Software with a designated operating system. The terms of the licenses between the Debtors and SAS are governed by two (2) Software License Agreements effective as of February 1, 2002 (the "2002 License") and December 17, 2004 (the "2004 License") (collectively, the "License

Agreements”), copies of which are attached to the accompanying Declaration of Debbie F. Faircloth (the “Faircloth Decl.”) as Exhibits A and B and are incorporated by reference.

2. Pursuant to the License Agreements, the Software is initially licensed, and licenses are renewed, via the issuance of a purchase order and payment of first year and renewal fees by the Debtors. The License Agreement and the purchase order combine to govern the terms of the Licenses.

3. In addition to Software licensed under purchase orders for which payment has been made, the Debtors are currently licensed to use Software provided under one (1) active purchase order for which payment has not been made. The active purchase order, No. TCS26398, was submitted on March 11, 2009 (the “March 11, 2009 Purchase Order”), pursuant to which the Debtors have a license to use the Software described therein for the period ending January 31, 2010.

4. The Debtors are also continuing to use Software pursuant to a license granted under a purchase order issued by Electronic Data Systems Corporation (“EDS”) as payment agent for the Debtors (the “EDS Managed Software”). As provided in Section 3.4 of the 2002 License, the Debtors remain ultimately responsible for payment of license and service fees for purchase orders issued on its behalf. The license granted for the EDS Managed Software has expired effective as of May 31, 2009, although prior to filing for bankruptcy relief, the Debtors expressed a desire to renew the license and SAS has permitted such use pending the administrative process of issuing a purchase order. Hereafter, the licenses granted to the Debtors for use of the Software shall be referenced as the “Licenses.” Copies of the March 11, 2009 Purchase Order and a list of

the EDS Managed Software are attached to the Faircloth Decl. as Exhibits C-D and are incorporated by reference.

5. On June 1, 2009, the Debtors filed for bankruptcy relief. As of the Petition Date, there were significant amounts owing from the Debtors to SAS for the Licenses to use the Software. Under the March 11, 2009 Purchase Order, the Debtors owed SAS the sum of \$216,000.00. The renewal license fees for the EDS Managed Software for the license period June 1, 2009 through May 31, 2010 is \$151,590.00.

6. On June 9 and 10, 2009, SAS received notification from the Debtors that they intend to assume and assign certain of the Licenses (the “Assumption Notices”). The webpage identified in the Assumption Notices, as established by the Debtors to indicate the executory contracts to be assumed and assigned by the Debtors, does not specify which of the Licenses the Debtors intend to assume and assign, but merely references SAS, identifies the March 11, 2009 Purchase Order, and shows no cure amount as being owed.

### **OBJECTION**

7. The Debtors cannot assume and assign the Licenses without curing the existing defaults. 11 U.S.C. §365(b). The Debtors do not propose a cure amount when, as reflected in the March 11, 2009 Purchase Order attached to the Faircloth Decl., the existing monetary defaults total \$216,000.00 (the “Cure Amount”). Moreover, in order to assume and assign the Licenses granted for the EDS Managed Software, the Debtors would first need to renew the license by paying a renewal license fee of \$151,590.00. The Assumption Notices contain insufficient information to allow SAS to determine

which of the Licenses the Debtors intend to assume and assign and, consequently, to determine the amount of any cure required by 11 U.S.C. §365(b).

8. SAS welcomes the opportunity to work with the Debtors to resolve the issues which prevent the Debtors from assuming and assigning the Licenses. However, unless such issues can be resolved prior to hearing, SAS respectfully requests that the Court (a) deny the Debtors' request to assume and assign the Licenses and (b) grant such other and further relief as deemed just and appropriate.

Dated: New York, New York  
June 12, 2009

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